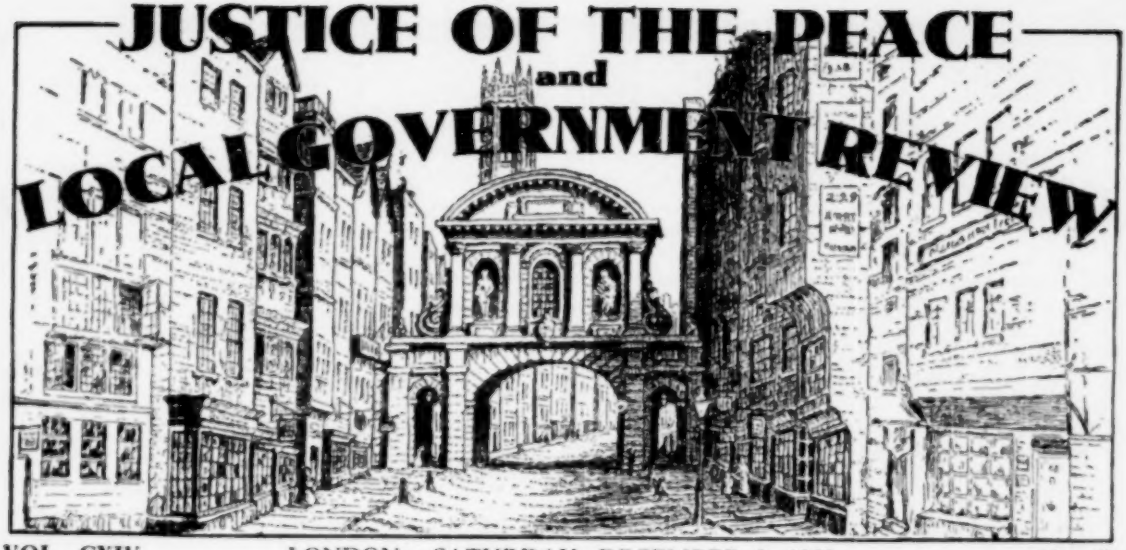


VOL. CXIV. LONDON: SATURDAY, DECEMBER 9, 1950. No. 49

CONTENTS

	PAGE
NOTES OF THE WEEK	702
ARTICLES:	
The Form of the Statutes	704
Ownership of Submerged Land	706
The National Institute for the Blind. Report for 1949-1950	707
REVIEWS	708
CORRESPONDENCE	709
LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS	710
THE WEEK IN PARLIAMENT	711
PARLIAMENTARY INTELLIGENCE	711
PERSONALIA	711
NEW COMMISSIONS	711
PRACTICAL POINTS	712

REPORTS

Court of Appeal
Beadsley and Others v. *United Steel Companies, Ltd.*—Factory—Lifting tackle—Tackle of good construction, etc., supplied by employers, but used for wrong purpose by servant 565
Court of Criminal Appeal
R. v. *Zielinski*—Criminal Law—Evidence—Admissibility—Time for deciding issue—Summing-up—Corroboration—No necessity for judge to refer to evidence relied on 571
King's Bench Division
Taylor and Another v. *Savcell*—Road Traffic—Driving while uninsured—Disqualification imposed by justices—Appeal to quarter sessions—Substitution of order of conditional discharge 574
Court of Criminal Appeal
R. v. *Walker*—Criminal Law—Committal for trial—Alleged invalidity—Taking of depositions—Leading questions asked—Indictable Offences Act, 1848 (11 and 12 Vict., c. 42), s. 17 578
Court of Appeal
British Portland Cement Manufacturers, Ltd v. *Thurrock U.D.C.*—Rating—Plant and machinery—Cement producing apparatus—Kiln—Cylinder resting on piers and rotated by electricity 580

LEGACIES
FOR ENDOWMENT

THOSE making or revising their Wills may like to consider benefiting some selected aspect of Church Army Social or Evangelistic work by the endowment of a particular activity—thus ensuring effective continuance down the years.

Gifts—by legacy or otherwise—will be valued for investment which would produce an income in support of a specific object, of which the following are suggestions:—

1. **Training of future Church Army Officers and Sisters.**
2. **Support of Church Army Officers and Sisters in poorest parishes.**
3. **Distressed Gentlewomen's Work.**
4. **Clergy Rest Houses.**

Preliminary enquiries will be gladly answered by the

Financial Organising Secretary
THE CHURCH ARMY
55, Bryanston Street, London, W.1

A Recommendation to Mercy

In recommending a bequest or donation to the RSPCA you may confidently assure your client that every penny given will be put to work in a noble cause. Please write for the free booklet "Kindness or Cruelty" to the Secretary, RSPCA, 105 Jermyn Street, London, S.W.1.

REMEMBER THE
RSPCA

MISS AGNES WESTON'S
ROYAL SAILORS RESTS
PORTSMOUTH (1881) DEVONPORT (1876)
GOSPORT (1942)

Trustee in Charge:
Mrs. Bernard Currey, M.B.E.

All buildings were destroyed by enemy action, after which the Rests carried on in temporary premises. At Devonport permanent quarters in a building purchased and converted at a cost of £50,000 have just been taken up whilst at Portsmouth plans are well advanced to build a new Rest when permission can be obtained.

Funds are urgently needed to meet heavy reconstruction commitments and to enable the Trustees to continue and develop Miss Weston's work for the Spiritual, Moral and Physical Welfare of the ROYAL NAVY and other Services.

Gifts may be earmarked for either General or Reconstructional purposes.

Legacies are a most welcome help

Not subject to Nationalisation.

Contributions will be gratefully acknowledged. They should be sent to the Treasurer, Royal Sailors Rests, Buckingham Street, Portsmouth. Cheques, etc., should be crossed National Provincial Bank Ltd., Portsmouth.

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

THE URBAN DISTRICT COUNCIL OF FELLING

Appointment of Clerk of the Council

THE Urban District Council of Felling invite applications from solicitors for the appointment of Clerk of the Council at a salary of £1,150 per annum. Candidates should have had experience of local government administration, conveyancing and advocacy.

The successful candidate will be required to devote his whole time to the statutory and other duties of his office and will not be permitted to engage in private practice as a solicitor. He will also be required to carry out all the legal work of the Council, to perform all the statutory and other duties devolving on and assigned to him by the Council, to attend all meetings of the Council and their committees and sub-committees, to reside within the Urban District of Felling, to be a member of a trade union while in the service of the Council and to give security in the sum of £1,000 with an approved Insurance Company, the premium payable under the policy being paid by the Council. He will be entitled to twenty-four days' leave annually in addition to general and public holidays.

All fees, emoluments, and payments of any kind whatsoever receiveable by the successful candidate in respect of any work carried out by him, including fees receiveable as Registrar of Local Land Charges, as Returning Officer for Local Elections and as Deputy Returning Officer, will be paid by him to the credit of the Council.

The appointment will be subject to the Local Government Superannuation Acts, 1937 and 1939, as modified by the National Insurance (Modification of Local Government Superannuation Schemes) Regulations, 1947 to 1949, to the regulations made by the Council with respect to their staff, to the successful candidate passing satisfactorily a medical examination by the Council's Medical Officer of Health, and to termination by three months' notice in writing from either side.

Applications, stating the full name, address, age, qualifications and experience of the candidate, and the date on which he will be able to commence duty if appointed, and accompanied by copies of not more than two recent testimonials, should reach the undersigned not later than Saturday, December 23, 1950.

Canvassing will be a disqualification but candidates may send copies of their applications and testimonials without a covering letter for the information of the members of the Council.

Applicants must disclose in wrting whether they are related to any member of or the holder of any senior office under the Council.

T. MYRDDIN BAKER,
Clerk of the Council.

Council Buildings,
Felling,
Gateshead, 10.
November 28, 1950.

LANCASHIRE No. 9 COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the above whole-time appointment, the area comprising the Manchester county petty sessional division, and the borough of Eccles.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of serving officers.

The appointment will be subject to the Probation Rules, 1949, the salary being in accordance with the prescribed scale, and the successful applicant will be required to undergo a medical examination. The ability to drive a motor car will be an advantage.

Applications, with the names of two persons to whom reference can be made, should be sent to the undersigned not later than December 14, next.

G. S. GREEN,
Clerk to the Probation Committee.

County Magistrates' Court,
Strangeways,
Manchester 3.

COUNTY BOROUGH OF BLACKBURN

Assistant Solicitor

APPLICATIONS with testimonials are invited by December 20, 1950, for the above appointment from suitably qualified candidates. Local government experience desirable. Salary according to experience and date of admission within Grades V (a) (£550—£610) and VII (£635—£710).

CHAS. S. ROBINSON,
Town Clerk.

Town Hall,
Blackburn.

CITY AND COUNTY OF BRISTOL

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer for the City and County of Bristol.

The appointment and salary will be in accordance with the Probation Rules, 1949, and the successful applicant will be required to pass a medical examination.

Applicants must be not less than 23 nor more than 40 years of age, except in the case of whole-time serving Probation Officers or persons who are otherwise qualified for appointment under the Probation Rules.

Applications, stating age, experience and qualifications, together with copies of not more than three recent testimonials, must be sent to reach the undersigned not later than Tuesday, December 12, 1950. Envelopes should be endorsed "Appointment of Male Probation Officer."

A. J. A. ORME,
Clerk to the Justices.

Petty Sessional Court House
Bristol, 1.

LANCASHIRE (No. 4) COMBINED PROBATION AREA COMMITTEE

THE above Committee invites applications for the appointment of a whole-time male probation officer to serve within the area.

The appointment will be subject to the Probation Rules and the scale salary will be paid, subject to deductions for superannuation. The selected candidate will be required to pass a medical examination. Applicants must be trained in probation work.

Applications, stating age, experience, educational qualifications and present appointment, together with copies of two recent testimonials should reach the undersigned not later than January 5, 1951.

G. LEACH,
Clerk to the Committee.

Court House,
Northgate,
Blackburn.

WARWICKSHIRE COUNTY COUNCIL

Junior Assistant Solicitor

APPLICATIONS are invited from admitted solicitors for the post of junior assistant solicitor in the office of the clerk of the peace and of the Warwickshire County Council. The salary of the appointment will be £635 per annum, rising by annual increments of £25 to a maximum of £760 per annum, but the commencing salary of the successful candidate will be fixed within the scale according to age and experience.

The appointment is subject to the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, on forms to be obtained from the Clerk of the Council, Shire Hall, Warwick, must reach the undersigned not later than December 18, 1950.

L. EDGAR STEPHENS,
Clerk of the Council.

Shire Hall,
Warwick.

Amended Advertisement.

BOROUGH OF BRENTFORD AND CHISWICK

Appointment of Assistant Solicitor

AT a salary according to Grade VIII of the National scale of the National Scheme of Conditions of Service (*viz.*, £685 to £760 per annum, plus London Weighting according to age), commencing first year.

The appointment will be subject to (a) provisions of the Local Government Superannuation Act, 1937, (b) National Scheme of Conditions of Service and (c) satisfactory passing of a medical examination.

Applications, stating age, qualifications and experience, and giving the names and addresses of two referees, should be addressed to the undersigned, to be received not later than December 23, 1950.

Candidates must, when making application, disclose in writing whether they are related to any member or senior officer of the council, and canvassing directly or indirectly will disqualify.

W. F. J. CHURCH,
Town Clerk.

Town Hall,
Chiswick, W.4.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

VOL. CXIV. No. 49. Pages 702-713

LONDON : SATURDAY, DECEMBER 9, 1950

Offices: LITTLE LONDON, CHICHESTER, SUSSEX

[Registered at the General Post Office as a Newspaper]

Price 1s. 8d.

NOTES of the WEEK

Probation and Fine

We have several times been asked for our opinion on the question whether a person convicted on indictment for felony may be put on probation and fined for one and the same offence. We were told that at some courts of quarter sessions this course had been taken, the argument being that s. 13 of the Criminal Justice Act, 1948, confers power to fine " in lieu of or in addition to dealing with him in any other manner in which the court has power to deal with him." Our view was that the balance of argument was against such a construction of the statute, because s. 3 (1) empowers a court to make a probation order " instead of sentencing him," and a fine is one form of sentence.

The matter has now been settled by the Court of Criminal Appeal in *R.* v. *Parry and Others* (*The Times*) (November 28). Three appellants had been sentenced, on a charge of larceny to pay a fine, and were at the same time put on probation. The court set aside the probation orders and allowed the fines to stand.

The Lord Chief Justice, delivering the judgment of the court, referred to s. 3 (1) and said that a fine was undoubtedly a sentence. Sections 3 and 13 were contradictory, but it was clear, in the opinion of the court, on consideration of other provisions in the Act, that only an order to pay sums of money by way of compensation (s. 11 (2))—not by way of punishment—could be made at the same time as a probation order, and that the words of s. 13 did not entitle a court to impose a fine in addition to a probation order.

Corrective Training

No one can yet judge how far corrective training will succeed, or exactly on what lines the system will ultimately work. So far as it is possible to judge at present, it seems that corrective training may include some features of borstal training, but that it may also approximate to the treatment of star class prisoners. There are various prisons in which sentences of corrective training can be served, and apparently these differ from one another as much as do the borstal institutions.

It happens sometimes that a young man who has served a sentence in a borstal institution is convicted again while still under the age of twenty-one, and occasionally such an offender is again sent to a borstal institution, doubtless a different one from that in which he served his previous sentence. If he were over twenty-one it might well be that he would be qualified for corrective training, and that this would be thought preferable to a second sentence of borstal training.

In the Court of Criminal Appeal recently the Lord Chief Justice referred to this type of case. An appellant aged twenty appealed against a sentence of four years' imprisonment for housebreaking and larceny. He had previously been sent to borstal.

The Lord Chief Justice, delivering the judgment of the court, substituting a sentence of borstal training, said that those responsible for initiating legislation regarding matters of criminal law might consider whether it was not desirable that corrective training should be made available for people who had not reached twenty-one years of age but who had served a sentence of borstal training. There were cases, such as the present one, in which, borstal training having failed, it might have been advisable to impose a sentence of corrective training notwithstanding that the person concerned was under twenty-one.

Misplaced Sympathy

A case has been brought to our notice in which a court was placed in a somewhat difficult position by the response of newspaper readers to an account of proceedings which had taken place in the court. The case concerned a charge of shoplifting made against a woman whose husband occupied a position of responsibility such that the conviction of his wife of the offence charged could not but prove a serious embarrassment to him. The court had no doubt that the charge was properly brought, and the question of sentence was by no means an easy one. It was not a question of sudden temptation and the quick snatching of one article. Articles had been stolen on two different days from two different stores and a conviction in these circumstances might well have been followed by a sentence of imprisonment. The court felt, however, that having regard to the offender's past record the case could in all the circumstances properly be dealt with by a fine and ordered the payment of £25 and £3 3*s*. costs. Time was allowed for payment.

The case was reported in one of the newspapers, and in the report some emphasis was placed on the woman's position and the fact that her husband's income was not a large one. The report seems to have aroused the sympathy of some readers to such an extent that enough money was sent, either through the newspaper concerned or direct to the court, to pay the amount of the fine and costs several times over.

The court's position in these circumstances is not an easy one. The view it had taken was that these were offences which were not suitable to be dealt with by probation but which were deserving of a substantial fine ; and it must be remembered that the court has a much more balanced view of the case as a whole than is likely to be taken by readers of a newspaper article written possibly from one particular angle. Should the court

allow itself to be the channel through which these contributions are passed to the offender so that far from being punished (other than by the actual conviction) she makes a considerable profit from her appearance before the court. We think most of our readers would agree that the court should not allow itself to be so misused. No one can stop a person from paying another person's fine or from giving money to someone whom they think, rightly or wrongly, is deserving of their charity. But we think that it is quite inappropriate, and indeed wrong, that a court which, after full consideration of all the facts, considers that the offence merits punishment should have any part in helping to reward the offender.

Official Films

The cinema has come to be accepted, in certain circumstances, as a suitable medium for educating sections of the public on matters of general importance—the film "The Blue Lamp" is a notable example. According to a report we have seen in the press, a new Central Office of Information film called "Four Men in Prison" has met with quite an unfavourable reception when it was shown at Harrogate recently to 200 magistrates attending a week-end school there. The report states that the film was described as "useless" and "a waste of public money," and that magistrates, coming from all parts of England, condemned the portrayal of the trials and sentences as being "unrealistic and inaccurate."

The newspaper concerned sought the views of the Home Office on these criticisms and was informed that when the views of the magistrates were received they would certainly be carefully considered. It was stated that the object of the film was to inform magistrates what life in prison is like and the film was made under the guidance of the Prison Commissioners. It was intended to illustrate the dangers of sending first offenders to prison and to show the need for adequate medical examination, before sentence, of certain types of prisoners. In the case of the "mental delinquent" portrayed in the film (we quote the phrase used without comment) the whole point of the film was to show that had there been an adequate medical examination his sentence might have been different.

We have not seen the film and can offer no opinion on its merits. It is, however, a matter of public interest that if public money is to be spent in this way some satisfactory result should follow, and it does seem remarkable that, assuming the report in question to be an accurate one, the reactions of the magistrates concerned, who would appear to have been a representative gathering, should be so generally unfavourable.

The Cabman's Obligation to accept Hirings

In the House of Commons on November 21, Mr. Butcher, National Liberal member for the Holland Division and Boston of Lincolnshire, had the distinction of being the first member since before the war to obtain leave under the ten minutes rule to introduce a Bill. The purpose of his proposal is to compel a cab driver in London to accept a hiring while passing through the streets. Before the decision in *Hunt* v. *Morgan* [1948] 2 All E.R. 1065; 113 J.P. 67, there was a widespread impression that a disengaged driver, even though not standing still, was bound to accept a hiring: an impression which was plausible in face of the obscure language of ss. 7 and 17 of the London Hackney Carriage Act, 1853. The decision in *Hunt* v. *Morgan* showed that the cabman, even though his meter is in the "for hire" position, is not bound to accept a hiring unless he is on a stand or at rest in the street, so that the London law is seen to be the same as the law elsewhere has always been under the Town Police Clauses Act, 1847. Section 53 of this Act says in so many words that the obligation to accept a hiring only arises when the hackney carriage is on a stand or standing in a street.

The Bill was printed and published at the end of November, but at the time of going to press has not come up for further debate. It will be surprising if it passes. In his introductory speech under the ten minutes rule, its introducer spoke, according to *The Times*, of foreigners with luggage arriving at Victoria, and being unable to obtain a cab because the driver preferred taking idle rich persons to a night club. This argument has no relevance to the Bill as printed, which, so far as it would extend the existing law, applies to moving cabs only. The cabman at Victoria is already bound to accept a would-be passenger. As a practical matter, we do not know how a would-be passenger could normally prove that a moving cabman saw his signal to stop, and we can see no reason why a London cabman should be in a worse position in this matter than a provincial cabman. Whilst a man who stations a vehicle in the street for the purpose of obtaining customers, an action which unless saved by statute could be an obstruction, can properly be forbidden to refuse customers, a driver who is on his way to the place where he intends to solicit custom, or is otherwise passing along the street, as any other driver may do, ought not to be obliged to obey a call from anybody who chooses to hail him.

Removal of Non-Conforming Building

We have from time to time come across the question whether a right of applying to justices under s. 65 (3) of the Public Health Act, 1936, is a right of appeal, of which notice to the potential appellant must be given under s. 300 (3) of the same Act. Our own view has been that there was a difference: the draftsman of the Act of 1936 must have known the difference between appealing and applying, and would not have used the word "application" if he meant "appeal." On the other hand, we know that some lawyers have taken the opposite view, that a local authority's notice under s. 65 of the Act of 1936 would be invalidated, if the recipient's right to apply to the justices to extend the time was not brought to his notice.

In *Nalder and Another* v. *Ilford Corporation* [1950] 2 All E.R. 903, Sellers, J., has now accepted our view. The headnote to the case says: "The right under s. 65 (3) of the Act of 1936 to apply to a court of summary jurisdiction for an extension of the period specified in the notice under s. 65 (1) is not a right of appeal which, under s. 300 (3), ought to have been stated in the notice." The learned judge's explanation of this point is to be found at the foot of p. 905 of the report.

The case is also of some interest otherwise, as an illustration of what we have often found happening, namely ambiguity as between a company and a person who controls the company, about the service of notices and about liabilities under the Public Health Acts. In the case mentioned the local authority had addressed certain notices to the company notwithstanding that the plaintiff in the case, who was a director of and controlled the company (and, as the learned judge found, was probably well informed of all the activities of the company, and received the notices by registered post), was in law the owner of the premises involved. The result was that notices were held not to have been properly served. This seems to have been pure inadvertence on the local authority's part, so far as can be seen from the statement of facts in the judgment; it looks therefore as if the plaintiff was lucky to receive damages even of £25, in respect of the council's having entered on the buildings to which the invalid notices referred, and still more lucky to get half the costs of the action.

THE FORM OF THE STATUTES

A foreword by the Lord Chancellor to the third edition of the Statutes Revised, issued in advance of publication, indicates that the edition is a further step towards the execution of a long-term programme of statute law reform which was inaugurated in 1947. In that year a survey of the valuable work done under the auspices of the Statute Law Committee since its foundation by Lord Cairns in 1868 showed that, although the advance made during the last century in the task of statute law revision, the indexing of the statutes, and the consolidation of statutes, had been continued during the present century, progress had been greatly hindered by the occurrence of two world wars and other causes. Into these Lord Jowitt thinks it is unnecessary to enter: among them may be mentioned parsimony about providing the highly skilled staff for the work; suspicion among members of Parliament lest the legislature be by-passed in revision at the hands of official lawyers; and political difficulty in some topics such as taxation. By 1945 action had clearly become necessary, not only because the position was deteriorating rapidly by reason of the cumulative effect of arrears, but also because under modern conditions the public interest was increasingly affected by the unsatisfactory condition of the statute book. It is no longer lawyers alone who are mainly concerned in ascertaining the law, but a much wider section of the public, comprising central and local government administrators, representatives of employers and workers, and those of public bodies and private associations. In this situation almost any Government would have had to move, and the present Government, with the cordial approval of all political parties, decided that a fresh effort must be made in this field, and that no real improvement could be accomplished until the business of statute law reform received a definite place among the duties of Parliament and of the executive Government of the day. Accordingly, just a century after the main group of Clauses Acts of 1847, which virtually started the modern portion of the statute book, the Statute Law Committee was reconstituted with new terms of reference, which are quoted in the editor's preface to the new edition. These terms of reference emphasized that the work of statute law reform must be carried out by two simultaneous processes:

(*a*) That of consolidating scattered enactments so that the statute law may more easily be found and understood;

(*b*) That of reducing the bulk of the published volumes of the statutes, of keeping up to date the necessary indexes to them, and of providing means whereby they may readily be noted up annually.

For the execution of the first mentioned of these processes a special branch of the parliamentary counsel office has been formed, and progress has already been made towards carrying out programmes of consolidation recommended by the Statute Law Committee. Since 1947, twenty consolidation Acts, some of them of great size and importance, had been passed at the date of Lord Jowitt's foreword, and five more were expected to be passed during the session then current. The publication of the third edition of Statutes Revised marks the first step in the execution of the second process, and, as is pointed out in the editor's preface, it will reduce the number of published volumes of the statutes, down to the end of the year 1948, from fifty-seven to thirty-two. It should be noted, however, that the fresh efforts made in the field of consolidation have hardly yet begun to have their effect upon the bulk of the statute book. Only four of the consolidation Acts mentioned above were passed in time to enable the scattered enactments which they superseded to be eliminated from an edition closing with the year 1948.

Whilst it might have been thought more prudent to defer the publication of a new edition of the Statutes Revised until a greater number of consolidation Acts had been passed, the Lord Chancellor explains that the condition of the statute book in 1947 was so bad that further postponement was undesirable; indeed it had been decided twenty years earlier to publish a new edition. The first twenty volumes of the second edition, bringing the work of revision down to the year 1900, were published at intervals over a period of twenty-one years, and the last of these volumes was not published until 1909. Similarly the last of the four subsequent volumes of the second edition, bringing the work of revision down to the end of 1920, was not published until 1929. None of the volumes of the second edition revised the earlier volumes, with the result that much of that edition was already out of date before it was completed. There could not, therefore, be said to be in existence any completely revised edition of the statutes at all. Moreover, in 1947 no Statute Law Revision Bill had been passed for twenty years, so that even the foundations for a new edition still remained to be laid.

The reconstituted Statute Law Committee decided that arrangements ought to be made whereby the statute law of the United Kingdom would be constantly revised, so that new and completely revised editions, extending to the latest possible date before publication, could be brought out as occasion required—as is the practice in many territories within the Commonwealth.

The first step towards the accomplishment of this aim was to secure the publication as soon as possible of a new edition, of which all the volumes would be published simultaneously, a project never before attempted in this country. This could not be produced in 1949, but, if it all appears (as now seems probable) in 1950, the edition, with the statutes for 1949 and 1950, will contain all the living public general Acts in force at the beginning of 1951.

Turning back from revision to consolidation, we have already written more than once in commendation of the progress already made, without detriment to our wish that things would move faster, especially in the local government (and magisterial) world. We know that, about the statutes dealing with the daily work of justices, many people have doubted whether much can be done until the substance of the law has been re-written, but seeing that, as was stated in the House of Commons recently (113 J.P.N. 736), some nine-tenths of the judicial proceedings taking place in this country take place before magistrates it is a shocking thought that the principal statute governing the procedure is close on a hundred years old, and that its most important amending statute is nearly seventy years old, to say nothing of amending and extending statutes of more recent years, right up to the Criminal Justice Administration Act, 1948, and the Justices of the Peace Act, 1949. In addition to the proceedings of magistrates, sitting as a court of first instance to deal with offences triable on indictment, or as a court of summary jurisdiction, these and other Acts provide for recovery before magistrates of a multitude of civil debts; there is also the rating jurisdiction, the vast matrimonial jurisdiction, and an increasing number of appeals in administrative matters. We agree that by itself consolidation of the Summary Jurisdiction Acts, to which has now been added the Justices of the Peace Act, 1949, would not go all the way, but even consolidation by itself, into modern language, would be worth something, while consolidation accompanied by pruning would be extraordinarily worth-while. There is (so far as we know)

no serious dispute about the sort of procedure which ought to apply to hearings before magistrates and we should have thought that this was very much the sort of topic which could be dealt with concurrently, by a consolidation Bill and by an amending Order in Council, now that the procedure by Order in Council has been accepted by Parliament.

The Highway Acts provide another conspicuous illustration. The principal Act now dates from 1835. Some of its provisions, for example those dealing with the closing and diversion of highways, still have to be worked in some cases, but have been gravely encroached upon by local legislation, by some general legislation, and finally by the Town and Country Planning Act, 1947. Other provisions of the Act of 1835 have been affected in one way or another by a vast amount of legislation in the nineteenth and twentieth centuries, some of it necessitated by modern motor traffic, for which many of the provisions of the Act of 1835 are unsuitable. Yet other provisions of the Act of 1835 overlap provisions in the Town Police Clauses Act, 1847, and in the Public Health Acts. Before war broke out in 1939, the Local Government and Public Health Consolidation Committee had been asked to start considering highway and allied legislation, under the chairmanship of the late Lord Almuree. The war put a stop to this, but since the end of hostilities there has been a committee or working party, called a "policy group," established by the Minister of Transport, on which the local government associations were represented, examining these Acts. It would be exceedingly helpful if legislation consolidating them could be introduced without further delay, accompanied either by a Bill or by an Order in Council under the new procedure, so as to get rid of obsolete provisions and make the remaining, inevitable, bulk intelligible and workable. At present it is neither.

It may be thought useless to urge once more the consolidation of the Rent Restriction Acts—the question of consolidating these is tied up with questions of policy. But we make no apology for urging that what has been done in Ireland and South Africa could be done here, given the will to try. Lord Ridley's Committee in 1945 recommended amongst other things that a "child's guide" to the Acts should be issued from the Ministry of Health; this was issued in July, 1946, but such a guide is not authoritative. The same thing, in principle, done in the form of a consolidating statute would be authoritative. Since Lord Ridley's Committee was appointed there have been two general elections, and, as the country gets nearer to the next general election, it is not unduly cynical to think that the Government will be (that any Government so situated would be) more and more inclined to postpone amendment of the Acts. Meantime, the mass of small property owners and their tenants are left to struggle with a dozen Acts which have not been consolidated since 1920. We doubt whether the number of unsettled points is so serious as to form a real barrier to a fresh consolidation, and this would not only be an immense boon to those affected, but would show Parliament itself what the law is as it stands.

Passing from rent restriction to another subject in our own field, what of the Gas Works Clauses Acts? The Water Works Clauses Acts were recast (not always happily) and throughout a large part of the country superseded by the Water Act, 1945. More than twenty years ago Mr. Wrottesley, as he then was, afterwards Lord Justice Wrottesley, was chairman of a committee whose report led to the Gas Undertakings Acts of 1929, 1932, and 1934, but the muddle of the Clauses Acts, and the gas provisions of the Gas and Water Facilities Acts, 1870 and 1875, has survived nationalization of the industry and transfer of central duties from the Board of Trade, who were then responsible, to the Ministry of Fuel and Power, where it might have been expected that some newer brooms than the Board of Trade possessed would have been inclined to do some sweeping.

The Electricity Acts are in something the same case as the Gas Works Clauses Acts, although not quite so old. There are the Clauses Acts themselves, and several general statutes. We have, in dealing with Practical Points, often found it difficult to thread a path among them, so as to find out what are the powers of electricity undertakers or the rights of consumers, and we suggest that this also is a potentially popular subject, which it would be worth while for the Ministry of Fuel and Power to take up.

Yet another topic which appeals to us, namely the Lands Clauses Acts, could not have much popular appeal—most people have never heard of them. But, like the Gas Works Clauses Acts and Electricity Acts, they do affect the public much more than the public knows. The original Act of 1845 has stood up well: large parts of it are incorporated in very recent Acts and printed *in extenso* in the latest text-books. But there are two other Consolidation Acts, *eo nomine*, in the index to the statutes, and the law is complicated by the Acquisition of Land (Assessment of Compensation) Act, 1919, and the Acquisition of Land (Authorization Procedure) Act, 1946. The Acts would bear shortening and restating in modern language.

The law of burials is another subject not likely to be popular, but one very near our own heart. This block of Acts on its own demerits deserves to be put high on any consolidation list. Admittedly, amendment is required; it is ludicrous, for example, that a town council or urban district council cannot proceed under the Burial Acts without burial boards, or formalities belonging to the days that the charges to be met by the person responsible for a funeral should depend upon the topographical accident, whether the corpse is put away in a burial ground technically so called or in a piece of ground technically called a cemetery. But consolidation of the Burial Acts, even without amendment, would at least make them shorter and more intelligible, and show up the absurdities; the latter are mostly so patent that a good case for amendment by Order in Council would at once be seen to exist.

Enforcement of rates is another topic in which we can claim specialized interest. The substantive law of rating and valuation was (in effect) brought up to date in 1925; it is true that derating has since made a mess of it, and the Local Government Act, 1948, has modified the substantive law and the procedure on the valuation side. But the law of rate recovery has, in the main, been left outstanding; the average ratepayer is affected by this as much as by the substantive law, while the local official is more interested in it than in the substantive law. Even though central valuation has been substituted for local, rates so long as they continue will have to be levied locally, and probably will go on being collected by local rating authorities. The present statutes dealing with the recovery of rates, as set out in *Ryde on Rating*, comprise some surviving words of the Statute of Elizabeth, then bits of Acts of 1742, 1743, 1801, 1814, 1820 (some minor provisions between these years about specific rates), 1849, 1862, 1869, 1874, 1877, and 1882; bits of the Rating and Valuation Acts, 1925; and the Money Payments (Justices Procedure) Act, 1935. We should hesitate to guarantee the completeness of this list. The whole business is a bit archaic, but workable, and there is no strong demand for amendment, so far as concerns procedure, but it could be restated in modern language

without great difficulty, to the great advantage of those affected, without prejudice to any question of amending the law, or the liability for rates, or the relation between rates and taxes.

In urging that consolidation be pressed on, we have in what is said above confined ourselves to topics intimately associated with our own work. It would be ungracious to forget that those responsible for consolidation have done a good deal for local government this year. We spoke particularly of the new Shops Act, 1950, in an earlier note. Allotments, Diseases of Animals, Electoral Registers, Food and Drugs (Milk, Dairies, and Artificial Cream): these, with the Vehicles (Excise) Act, 1950, do not make a bad list. But we should like to see consolidation tackled in the big things we have mentioned. Not so spectacular as the Festival of Britain, and not so exciting as the general election which may be the other main entertainment of 1951, but a good deal more lasting in the effect on people's lives.

OWNERSHIP OF SUBMERGED LAND

From one of our American correspondents we have received a seventy page printed document, submitted to the Supreme Court of the United States. This is a petition by the State of Texas, for the re-hearing of a case which that Court had decided in favour of the federal government, dealing with an area approaching three million acres of submerged land, off the coast of what was anciently a part of Mexico, so that Spanish law amongst other things comes into the picture. The case is in many ways interesting to the student of procedure, and may conceivably be important in international law. The lands in question, notwithstanding that they extend nine miles from shore, were claimed as part of Texas when it was a separate republic, before its union with the United States. We do not find it anywhere stated expressly whether any of this submerged land was foreshore; the general inference seems to be that the nine miles was measured from low water mark. Whilst the ownership of the lands was not of great importance during the first century after the annexation, it has become important in view of recent mineral discoveries. The State of Texas had treated the submerged land as State property (*dominium* as distinct from *imperium*) for a century and more, but at the end of 1948 the federal authorities claimed that it was not the property of the particular State but of the United States government and so far they have prevailed before the Supreme Court. Whichever way the decision ultimately goes, there seems to be a claim to *dominium* extending thrice the old distance of three miles from low water mark, which is why we say the dispute may have international importance.

We do not forget that the three mile limit, originated by Bynkershoek some two and a half centuries ago, and adopted by most jurists and governments with reference to the effective range of shore batteries (*per* Lord Stowell in *The Anna* (1805) 5 Ch. Rob. 373), has been much debated in the last few years, when coastal batteries, fast ships, and aircraft have so greatly extended the range of possible mastery of ships at sea by the representatives of a government on shore. Thus at the turn of this century the Institute of International Law (*Annuaire*, 13, p. 286) declared for the six miles already favoured by Spanish authorities. But, perhaps because of the almost unlimited control which might otherwise be claimed on account of engines now available, the tendency has been most recently to return to the three mile limit. This was, for example, most positively re-affirmed by the United States as well as Great Britain in the bootlegging days, by the Anglo-American Treaty of 1924, just over a century since its affirmation by the same two powers in 1818. In the treaty of 1924 the American right of searching British vessels up to one hour's steaming from the American coast was expressly granted as an act of courtesy. The claim now being litigated in the United States must, therefore, be distinguished from the claim to control the movement of ships and the exercise of other rights upon the surface. Up to three miles, that is to say, from low water mark of ordinary tides, the riparian state has *imperium* over the surface as well as *dominium* over the water (*e.g.*, an exclusive right of fishing) and the subsoil, these rights being subject to the public right of passage. Outside the three mile limit, not only the surface but also the water of the sea is subject to public use, but there is nothing in international law to preclude *dominium* by a riparian state beneath the bed of the sea. The well-known Whitehaven coal mines could be extended for any distance and, so far as there was beneath the sea effective occupation of the subsoil, British jurisdiction would extend. It is consistent, then, with international law that first Mexico and then Texas, and now the United States, should claim proprietary rights in the soil lying off the Texan shore, and in the oil or whatever it is that is to be extracted. Rights of this sort could logically be extended as far as the three mile limit of some other state, with the proviso that such extruded *dominium* must not intrude into a part of the subsoil already effectively occupied by some other state. Where an undersea railway tunnel or road tunnel is constructed, as must somewhere happen sooner or later, the rights in it will have to be adjusted by agreement, as was proposed in the Report of the Commissioners for the Channel Tunnel and Railway, *Parl. Papers*, 1876, C.1576. The position is perhaps illustrated better by considering (say) a tunnel between Scotland and Northern Ireland. With the sovereignty in the same hands at each end, *dominium* in the tunnel would be British throughout, yet this would be quite consistent with the right of all nations to navigate the sea, and to take fish therein, above the soil in which the tunnel was laid. Upon such a right of extending national control in the subsoil, the only limitations which the theory of international law makes necessary are that the subsoil owner must do nothing to interfere with international rights and must be able to exercise control in fact. The governments of Texas and of the United States have apparently thought for more than a century that the latter consideration was fulfilled in the Gulf of Mexico and, regarded in this way, their claim is consistent both with the American recognition of the three mile limit in 1924, and with the American assertion of control over the natural resources of the sea-bed and control of the "continental shelf" adjacent to the United States, in a proclamation by the President on September 28, 1945—although the question how far international law will recognize a riparian claim upon the sea bed, as distinct from the subsoil to which access is obtained by tunnelling, is at present a moot point among international lawyers. It is obviously important in regard to oyster and pearl fisheries, and it is just as obviously desirable for other countries to keep an eye upon developments, less the purely proprietary rights exercisable in the subsoil (and less certainly upon the bed) of the sea should imperceptibly grow into rights of jurisdiction and control such as, upon the doctrine of "contiguous zones", have been alleged by M. Louis Renoult and by other jurists.

The petition for re-hearing is based partly on the allegation that Texas had not had sufficient opportunity to prepare her case, or been sufficiently informed of the case which the federal

government would put forward, and partly on the ground that the number of justices of the Supreme Court who took part in the hearing was divided by four votes to three so that, in as much as two of the nine members of the full Court did not take part, the decision given was by a minority. This is said to be contrary to the practice of the Court in constitutional matters; it may remind the English reader of occurrences in our own judicial history, when decisions have been reached by a single vote, at a sitting of the House of Lords consisting of less than the full number of peers qualified to sit. The petition for re-hearing is presented by the Attorney-General of Texas and no less than ten assistant attorneys-general (a surprising number of functionaries to be so intituled, according to English ways of thinking); it is supported by the signatures of five other counsel, headed with the name of Roscoe Pound, and embodies a memorandum signed by those five and by six others, who—without possessing Pound's world-wide reputation—seem from biographical notes prefixed to the memorandum to be a team of remarkable eminence. This biographical note is an oddity to English eyes. Another curiosity is that the memorandum states that each of the ten counsel had, individually and separately, investigated the case and arrived, without collaboration, at the same conclusions which, after being embodied in separate opinions, had been combined in a single memorandum. Here is something reminiscent of the *jurisconsulta* of Roman legal procedure, with Pound wearing the toga of Papinian. The names appended are, at any rate, sufficient assurance that the summary of the facts and law which the document contains will be worth reading: the outsider can not, of course, form an opinion on the question whether the arguments are likely to be conclusive, but there is a remarkable collection of quotations and authorities, not merely American, but from works on international law from other countries.

The reader in the British Commonwealth is bound to be reminded of the great case before our own Judicial Committee, reported under the unimaginative title of *Re Boundary between Canada and Newfoundland in Labrador Peninsula* (1927) 137 L.T. 187, where Canada and the then separate Dominion of Newfoundland fought out the question of *dominium* (and *imperium*) over Labrador. Labrador was another piece of territory resembling the submerged areas of Texas, in that for a long time it had little value, but had come to be, or was expected to become, valuable with development of the world's needs for its products and with modern skill in their exploitation. The Judicial Committee, like the Supreme Court of the United States, was not exercising an appellate jurisdiction from inferior tribunals: it seems that the Constitution allows the Supreme Court to entertain an issue of this sort in its original jurisdiction, while the Privy Council in the Labrador case was advising upon a question referred to it by His Majesty without adjudication in any court of law, a question of the meaning and effect of grants made by his predecessors, going back to George III's acquisition of the disputed territory by conquest from the French. The petition for a re-hearing by the Supreme Court claims that certain arguments which had been put forward at the hearing already given had not been fully dealt with by the Court; amongst these, one finds reference to *A.-G. of Canada* v. *A.-G. of Ontario* (1898) A.C. 700, followed by extracts from *Vattel* quoted in Chitty's English edition. One finds also other British cases, such as *Lord Fitzharding* v. *Purcell* (1908) 2 Ch. 139. *A.-G. for British Columbia* v. *A.-G. for Canada* (1914) A.C. 153 does not seem to be quoted, perhaps because the Judicial Committee expressly refrained (p. 174) from defining the nature of the rights of a maritime state. It is satisfactory to find the leading lawyers of another country recognizing the force in the international sphere of decisions by the Privy Council. How long, with modern disintegrating processes at work, the Judicial Committee will continue to occupy a position of primacy in the settlement of questions of international law can be no more, in present circumstances, than a matter of conjecture.

THE NATIONAL INSTITUTE FOR THE BLIND

REPORT FOR 1949—1950

The annual report of the National Institute for the Blind is published in its usually attractive form and is extremely well illustrated. In view of the apprehension sometimes expressed at the taking over of much of the work of voluntary organizations by the State through the expansion of the social services, it is as well that emphasis is made in the report at the outset on the present happy relationship between the Institute and the State. The Institute, a purely voluntary body, has been fully accepted by the State as a partner in the plans it has laid down and put into force for assisting the blind. Consequently, since the passing of the new social legislation which came into effect two years ago, the Institute's work has continued in each year in magnitude. For the first time since the war the annual production of Braille literature exceeded the pre-war figures. During the year 44,511 volumes, 26,977 pamphlets, 353,225 newspapers and 139,081 magazines were issued. The following extract from a letter from a blind solicitor shows the help given by the Braille publications in very diverse spheres. He said:

> "The very first number of the Braille extracts from *Law Notes* enabled me to deal with a county court matter which could by no means have been dealt with without the up-to-date information to which that number referred me."

The publication of literature in Moon type reached pre-war level. During the year 4,927 volumes, 13,651 pamphlets, cards, etc., 8,517 magazines and 24,383 newspapers were produced. Moon benefits mostly the elderly blind, as it is a simple embossed type easily learnt by those who lose their sight in later life and are unable to master the more complicated Braille system. But a book in Moon occupies nearly twice as many volumes as in Braille, and the cost of production is accordingly much heavier.

One of the most interesting of the many activities of the Institute is the work of rehabilitation at America Lodge, Torquay, which has been approved by the Ministry of Labour as a pre-vocational centre to fit blind people for employment, but its atmosphere is more that of a residential hotel. Originally one of the Homes of Recovery for war-blinded civilians, it now admits any newly blind person who needs readjustment, physical, mental and spiritual, to the conditions of blindness. The methods adopted have proved so successful that a nearby property has been acquired in order to bring the total accommodation up to seventy. During the past year the placement officers employed by the Institute built up a network to deal with the people leaving America Lodge. The keynote has been

"training for industry." Of seventy-three people interviewed, forty-two were recommended for open industry, ten for shorthand and typewriting, twelve for telephony, and nine for miscellaneous positions. Following these recommendations, forty-two were placed in employment, including thirty in open industry. One man was reinstated as a lecturer, and one in the Civil Service, one in business and one accepted for physiotherapy, while the Institute has taken four—two as placement officers, one as a woodwork instructor, and one as an appeals organizer. This is in keeping with the policy of employing as many blind people as possible in the Institute's work. There are now nearly a hundred. In addition to these placements of America Lodge "graduates," 200 other blind people were placed—twenty-five as shorthand typists, forty-one as telephonists, and 134 as industrial workers. The total number of the year's placements is therefore 242, of which forty-four were replacements. Twenty-six of the people leaving America Lodge during the year were recommended for training for employment in workshops for the blind or as home workers. Some of the workers may eventually come into the Home Workers Scheme which is managed for the local authorities of Kent, Surrey, Sussex, Hampshire and London south of the Thames. Nearly all of the 285 home workers have been kept fully employed during the year.

Another very important activity of the Institute is in connexion with the establishment and maintenance of Homes for the Blind, of which there are residential homes, homes for the deaf blind, holiday and convalescent homes and hostels.

Appended to the report are some interesting facts and figures as to the civilian blind population of whom there are 78,579, ranging from sixteen babies under the age of one to 34,890 men and women over the age of seventy. Of the total number, 11,331 suffer from an additional handicap, either physical or mental; they include 4,266 who are deaf-blind. Though the number of blind infants under the age of one is the same as last year, there are sixty-five more "under fives"—285 as compared with 220. This does not necessarily mean, however, that the proportion of blind to sighted babies has increased, but the possible causes of the increase in number are being carefully investigated. There are seventeen residential schools for blind children between the ages of five and sixteen, and in these about 1,000 boys and girls are given a sound general education, similar in many respects to that given in schools for the sighted.

On the question of employment, it is pointed out that broadly speaking, the fields of employment now open to the blind are the traditional workshop trades, handicrafts practised in their own homes, various professional and commercial occupations and industrial work in factories ordinarily employing sighted labour. There are 3,230 men and women employed in "sheltered" workshops, making such articles as baskets, mats, brushes and knitted and woven goods. Home workers number 1,453. Many of the workers in sighted industry are recruited from among the newly blind.

There are 43,752 blind men and women over the age of sixty-five, of whom 1,808 are in Homes for the Blind—3,332 are in former Public Assistance institutions and would gladly enter special homes if accommodation were available.

REVIEWS

The Law of Advertising. By W. J. Leaper. London: Butterworth & Co. (Publishers) Ltd. 1950. Price 21s. net.

This is a highly original work. A person noticing the title would be likely to suppose that it was concerned chiefly with the law relating to the display of advertisements which, passing through vicissitudes from the Advertisement Regulation Acts down to the Town and Country Planning Act, 1947, seems now to have more or less settled down in the last named Act—although it remains to be seen what degree of public benefit will follow from its novel and drastic provisions. The reader finds, however, on picking up the book that it does much more than set out the present law about displaying advertisements. The learned author is not only a member of the bar, but assistant general secretary of the Advertising Association, and he has set himself to bring together everything which has a legal flavour, in the rules which advertising agents, newspapers, commercial designers and others have to bear in mind when preparing advertising matter for the public. Not only so, but he has included chapters on the law of contract (of which in thirty-eight pages he gives as good a summary as the non-legal reader could possibly require) and an introduction, showing the relation of the various trades and professions involved in advertising to each other and to the law. In this, for example, there will be found an account of the different sources of law, and the reason why a statute takes the form it does—with rules based upon *Burrows on The Interpretation of Documents* which he suggests, and in our opinion rightly, might be borne in mind by many other persons who have to deal with words and sentences, as well as by the lawyer. After these general matters he proceeds to discuss the liabilities arising out of agency, a matter with which the advertising fraternity is necessarily much concerned, and then some of the chief snags, if we may so describe them, affecting advertising on the legal side, such as copyright, infringement of designs, trade marks, and passing off. There is an important chapter upon defamation, one of the most serious matters which advertisers have to bear in mind. After this the book proceeds to specific problems, such as the law of advertisement display which we mentioned above, and to peculiar provisions, on all sorts of subjects, some of which, we confess, would not have occurred to us as being of interest to the advertiser, although, on perusing what Mr. Leaper has to say about them, we have discovered that we should have been mistaken. Among matters of this sort one finds bank notes and coins and quite a quantity of information about the advertising of food and drugs, including vitamins. There is a list of associations concerned with the protection of advertising interests and with improving the status of the various groups involved. After this, the learned author comes to the actual text of the more important legal provisions, and sets out also several codes of conduct agreed by advertisers with such bodies as the British Medical Association and the Pharmaceutical Society. We have more than once criticized the reluctance of Parliament, and governments of all complexions, to deal with the more blatant abuses of advertising in regard particularly to medicines and articles of food, and we have been the more pleased to learn from Mr. Leaper's pages that more than we knew has been done, by advertising bodies themselves, to do away with these abuses. On every legal and quasi-legal aspect of advertising the book is a mine of information; it should be useful to our own readers in several departments of local government work.

The Child and the Magistrate. By John A. F. Watson. London: Jonathan Cape. Price 12s. 6d. net.

The author of this book is so well-known as to need no introduction and this is not a new book but a "revised and largely re-written" edition of one which was first published in September, 1942. Mr. Watson's attitude to juvenile courts and their work is based, we think it may fairly be said, on the quotation given on the title page of this book *Les enfants sont ce qu' on les fait*. He looks all the time for the possibility of creating good out of evil, and is concerned that the court shall take a constructive course in the hope of setting the child in question on his feet, able to play a useful part in the country's life.

He is a master of his subject, and we doubt if any lay magistrate has a better knowledge of the technicalities of juvenile court procedure. There are one or two minor mis-statements, but they do not in any way lessen the value of the book, which all who are concerned with the welfare of children should enjoy reading, and should read with advantage. There can be few who will not learn something from it. The procedure in court, the many factors which must be considered in deciding how best to deal with a case, the various possible forms of treatment (which may include some kind of punishment), all these and other matters are clearly and positively dealt with. There can be no doubt that Mr. Watson has very positive views on all the questions on which he writes. We even get the impression that it might prove a little embarrassing if he found himself

sitting with a colleague with equally positive views very much opposed to his own. Having regard to the constitution of a juvenile court one might have looked for references to "our court" and what "we" do, but it is far more often "my court" and what "I" do. But the enthusiasm and devotion which he brings to the work there can be no shadow of doubt, and his conclusions are based on hard work and long experience, and a genuine love for children, however much they may have misbehaved. On this it is worthy of note that he has given his royalties on the sale of the book to the National Society for the Prevention of Cruelty to Children.

As an appendix there appears a specimen of the records kept by Mr. Watson on the cases coming before the court in which he sits. This is yet one more illustration of the trouble taken by the author to omit nothing that can help to lead to a satisfactory solution of the varying problems which come before the court, although some might question the propriety of the other members of the court being influenced in their judgment by Mr. Watson's private notes of what had happened previously.

We notice that the earlier edition proved so popular that there were no fewer than five impressions, the last being published in February, 1945. We think it highly probable that this revised edition will prove equally popular and we certainly think that it deserves so to do.

Borstal: A Critical Survey. By Winifred A. Elkin and Rev. D. B. Kittermaster. London: The Howard League for Penal Reform. Price 2s. 6d.

In producing this little book, the authors and the publishers have done a real service. Much has been said and written about the borstal system; its failures are well advertised and criticism is often as violent as it is ill-informed. On the other hand too much is sometimes claimed by enthusiastic believers in the system. Not everyone can make a study of it, yet many people are seriously trying to ascertain what is the truth, and what becomes of the many thousands of young people who undergo borstal training. Miss Elkin, an experienced observer and writer, gives a thoroughly objective description of the system. She states the law and the facts and is obviously anxious to be impartial. She has a great deal to say in praise of borstal, and where she has a word of criticism it is always constructive. She gives full credit to the Prison Commissioners for an enlightened policy, and for doing their best in spite of difficulties about buildings and staff. Of the governors, deputy governors and housemasters, she writes that "all are chosen because they have shown they have the gift for managing men and boys, and it is probably no exaggeration to say they nearly all have a vivid sense of vocation."

Miss Elkin is a little uneasy about "after care" and has some practical suggestions to make about it, but on the whole hers is a cheerful outlook.

Mr. Kittermaster should know all about men and boys. He was for twenty-five years master in a great public school, has been chaplain of an approved school, a chaplain to the Forces and chaplain of a borstal institution.

He writes more critically than does Miss Elkin, but his criticism is friendly and constructive. He believes in the system and acknowledges the good it has done but he feels that it could be much improved and could do even more good than it achieves at present. He has wholehearted admiration for the housemasters, but he thinks that some of them are apt to talk far above the heads of borstal boys who are often unintelligent and ill-educated. He is firmly of opinion that the best will never be got out of the system until borstal institutions cease to be under the Prison Commissioners, not, we feel sure, because he has anything against the Commissioners, but simply because he feels that staff should not be interchangeable between prisons and borstals, and that the division and the contrast between prison and borstal should be emphasized.

This is a small pamphlet, pleasantly written and well illustrated. It contains just the kind of information that should be placed before the public, and we hope it will enjoy a large circulation.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

PREMISES IN DISREPAIR—PUBLIC HEALTH ACT

May I beg space in your correspondence columns to take the discussion on abatement notices a stage further?

Two other correspondents have pointed out that s. 290 does not apply to s. 93 and that therefore the person served has no right to appeal.

May I suggest that the view referred to by your original contributor, that the local authority is not in a position to judge between the owner and the occupier and is not in fact required to do so, is the correct one? I know from experience that it is often accepted; in fact I do not know of an occasion on which it has been successfully opposed. The precise arguments in support I am not too sure about, and though I suggest the under-mentioned I would be grateful to hear others either for or against.

I would say that the wording of s. 93 "on the person by whose act default or sufferance the nuisance arises or continues, or, if that person cannot be found, on the owner or occupier" means that the local authority must serve on the person responsible for a nuisance if he is other than the owner or occupier (and of course can be found). Quite different wording would be used if it was intended to convey that the local authority were to serve on whichever of the owner or occupier were responsible if they could establish his responsibility and if not then on either at their discretion.

Alternatively I would argue that if "the person responsible" is to include the owner and the occupier then in most cases he "cannot be found" because the local authority can only form an opinion and not give a binding ruling, as to the liability for repairs under the tenancy agreement. It is a principle of English law that only the courts can decide a legal issue. The criminal is not guilty until the court so find, even if caught in the Act. The local authority is quite unqualified to form an opinion, has no power to require production of the tenancy agreement or to take evidence on oath, so that even if they may think they know which is liable the authority should, except in the most straightforward case (so rare that I cannot think of an example), always serve on either the owner or occupier exercising their absolute discretion as to which is chosen. In support of the main argument and of course the subsidiary one that it is in the authority's absolute discretion to choose either owner or occupier after deciding to assume the person causing or suffering the nuisance to continue, cannot be found, reference could be made to the fact that the draftsman of the Act deliberately chose to exclude from the section a subsection of general wording such as the last paragraph in s. 75 (1) and chose not to apply s. 290 (3) (*e*).

As a third alternative I have heard it suggested that when a complaint is heard under s. 94 of the Act all that need be proved is that an abatement notice was served and that the person on whom it was served has made default in complying therewith. It is said that it is outside the jurisdiction of the court to consider whether it was in fact served on the right person, that it is still an abatement notice even although not served on the person provided by s. 93, that if Parliament had intended the person on whom the notice was served to have an appeal it would have expressly provided for the same. This argument seems somewhat far-fetched because by a mistake the local authority might have served on someone with no connexion at all with the property or the nuisance, but I mention it because of my desire to have the question completely dealt with, if you will be so good as to afford facility for the same.

Yours faithfully,
W. A. SAXTON,
Deputy Clerk of the Council.

Municipal Offices, Oldway, Paignton.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

"SPECIAL REASONS"

The case of *Pilbury* v. *Brazier* reported by you on October 21, at p. 604, *ante*, adds one more to a series of cases which many members of our profession have found somewhat disturbing. As long as *Whittal* v. *Kirby* remains the law of the land, so long will an artificial and strained interpretation be given to the phrase "special reasons" in the Road Traffic Act, 1930, which I am certain was intended by Parliament to give to courts of summary jurisdiction a greater degree of discretion in dealing with the suspension of driving licences than they are now allowed to exercise. It is, however, a little surprising that it was thought necessary in a case of this type, where the offence was so clearly technical, to lodge an appeal designed (fortunately without success) to secure that a substantially innocent citizen whose minor offence caused no harm to anyone, should suffer an extremely heavy penalty which the court of first instance clearly thought inappropriate.

May I suggest that the time has come when Parliament should review the difficulties which have arisen in practice and restored to

the courts a discretion which they are well able to exercise. Automatic penalties often lead to grave injustice in practice, and this has particularly been the case where a conviction under s. 35 (use of uninsured vehicles) has resulted in disqualification for twelve months being imposed on an individual whose only fault was a lack of knowledge of the details of one of his insurance policies—a type of document notoriously difficult to interpret.

It is odd, too, to read of references in the Divisional Court to the "mischief" at which s. 35 is aimed when the activities of the Motor Insurance Bureau have substantially destroyed the foundations upon which the section was based. The whole purpose of the Bureau (which is financed by the insurance companies) is to secure, by meeting any legitimate claims involved, that no citizen shall suffer hardship through the negligence of a motorist who has not complied with the compulsory insurance provisions of s. 35. There would seem to be a very strong case for the complete elimination of the disqualification penalty so far as this section of the Act is concerned.

Yours faithfully,
CHARLES GREENWOOD.

Greenwoods, Solicitors, 31, Priestgate, Peterborough.

P.S.—Since dictating my letter, I have read "A call for higher penalties" by "Prosecutor" in your issue of October 28. How unfortunate it is that the accident problem should be obscured by such statements as "Most accidents are caused entirely through selfishness on the part of drivers" and that justices should be told to harden their hearts and impose more severe penalties. I feel that more and not less trust can safely be placed in the innate commonsense of courts of summary jurisdiction who have all the relevant facts before them when they proceed to assess a penalty. C.G.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 79.

A FALSE TRADE DESCRIPTION

A limited company which manufactured dog biscuits, appeared before the Buckingham borough magistrates at the end of September, charged with unlawfully selling dog biscuits to which a false trade description, *viz.*, "meat dog biscuits" was applied, contrary to s. 2 of the Merchandise Marks Act, 1887. A number of other charges were either dismissed or withdrawn by the prosecution.

The solicitor who prosecuted on behalf of the Buckingham county council, stated that the dog biscuits were sold in printed wrappers upon two sides of which appeared in prominent letters the words "meat dog biscuits" and he submitted that the use of the word "meat" in the description was a guarantee that it contained meat to an extent to justify this description. A county council inspector gave evidence that he purchased a packet of the biscuits in a shop. The biscuits were broken into small pieces and one of the three samples was sent to the public analyst. The inspector produced to the court a sample together with the wrapper containing the biscuits. He stated he subsequently saw the trader from whom he had purchased the dog biscuits and showed her the analyst's report and she produced an invoice from another party. This party was called upon and produced an invoice for the consignment of the biscuits from the defendant company.

The inspector stated that the defendant company carried on business in the north country where they had a good reputation. They had been in the business for about fifty years. The witness stated that he saw the managing director of the defendant company and members of the staff and produced to them the analyst's report and cautioned them.

The managing director stated to him that in pre-war days when meat had been in abundance and cheap, his company had purchased beasts themselves, but as they were now unable to do this they bought what they could in the form of meat greaves.

The director stated further that, so far as he was aware, there was no standard laid down for meat biscuits. The inspector, in cross-examination, admitted that Messrs. Spillers and Spratts had referred to the managing director of the company as a man of integrity and one who was held in high esteem, and tribute was also paid by these companies to the high standard of the defendant company's products.

The county council analyst gave evidence supporting the report he had made in which he stated that the sample of biscuit contained no meat and that the description was misleading. The report added that in the analyst's opinion, the biscuit was a very poor article and no better from a food point of view than an ordinary biscuit.

In cross-examination, the analyst denied that as a result of his report there would have to be fixed a minimum standard of meat which would be applied to all such biscuits, and he agreed that the more meat that was in a biscuit the cheaper the biscuit would be. His report that the biscuit was a very poor article, was limited in so far as the biscuit was described as a meat biscuit. He thought that the description implied that meat food was contained in the biscuit and not meat flavour. He had examined meat biscuits for many years, and they had all contained a proportion of meat.

A miller's manufacturer called for the prosecution, agreed with the analyst's report, and stated that he considered the description misleading; the biscuit he saw contained no meat at all except possibly one small piece.

A veterinary surgeon, who stated that he was a Master of Hounds, said that he could see no meat at all in the biscuits, and that he considered meat essential if a dog was to do any work.

The managing director of the defendant company, who had been connected with the business for forty years, stated that during the whole of that time the biscuit had been sold as a meat dog biscuit. There was no larger percentage of meat in the biscuit in pre-war days. Meat greaves, which cost £28 a ton, were in the biscuits. When the quantity of meat in the biscuit was increased, the cost of the biscuit went down. Two other witnesses called for the defence stated that they considered the trade description quite correct and that it meant a biscuit which lay between a biscuit having the flavour of meat and one which had meat vitamins.

For the defence, it was urged that there was no intention of gaining a financial advantage or of misleading the public. If the defendants had desired to mislead the public they would have applied the description to the biscuits themselves as many were sold loose.

The question to which the magistrates must direct their minds was whether it was proper to look for a biscuit constituted of meat or one which had the flavour of meat.

After a long retirement the chairman announced that the court had decided that there had been a false description, but there was no financial or criminal motive involved.

The company was fined £5 and ordered to pay £8 8*s.* costs.

COMMENT

It is understood that meat greaves, referred to above, are a by-product obtained in the manufacture of fat from bones, etc. When the fat is strained, small fibres of meat are collected and these are called "meat greaves." Greaves contain about thirty *per cent.* fat.

This case has been reported in some detail as it is considered that it will be of wide interest.

It will be remembered that the words "trade description" which formed part of the charge are defined in s. 3 (1) of the Act of 1887 as meaning, *inter alia*, any description, statement, or other indication direct or indirect as to the material of which any goods are composed. The expression "false trade description" is also described in the same sub-section as meaning a trade description which is false in a material respect as regards the goods to which it is applied.

Offences against s. 2 of the Act are punishable on summary conviction with imprisonment for a term not exceeding four months or to a fine of £20 and forfeiture of the chattel, article, instrument or thing by means of which the offence has been committed.

(The writer is much indebted to Mr. W. A. Davenport, chief inspector, Buckingham county council, for information in regard to this case.) R.L.H.

PENALTIES

Salisbury—October, 1950—malicious damage to property—six months' imprisonment. Defendant had been convicted a few days previously of receiving newspapers knowing them to have been stolen and fined £2. He was seen to throw a stone through a plate glass window valued at £25, completely shattering it, and when asked why he had done it said, "I am absolutely browned off."

Salisbury—October, 1950—selling a pair of utility nylon stockings above the permitted maximum price—fined £40. Defendant sold for 11*s.* 9*d.* when maximum permitted price was 6*s.* 9*d.* Purchaser was a member of a Price Regulation Committee.

Oxford—November, 1950—stealing a parcel of women's underwear—fined £5.

Newport—November, 1950—stealing two pint measures from an hotel (two defendants)—each fined 10*s.* Defendants were father and son who walked out of the hotel at night carrying the measures. They did not return.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

Mr. L. Wilkes (Newcastle-upon-Tyne C.) asked the Attorney-General in the House of Commons whether he was aware that a retired police officer whose name was put forward for appointment as a justice of the peace was refused appointment on the ground that it was not the practice to appoint retired policemen or police officers as justices for the counties or county boroughs in which they formerly served; whether, since 1945, any exceptions to that practice had been made; and in how many cases.

The Attorney-General, Sir Hartley Shawcross, replied that the practice of the Lord Chancellor was to decline to appoint to the commissions of the peace serving members of the police or constabulary forces, but to treat cases of retired members of those forces on their merits. In the case of borough commissions, the Lord Chancellor was reluctant to approve the appointment of retired police officers who had themselves served in the borough concerned, particularly if the officers had held the rank of inspector or superintendent. If a retired police officer of that kind adjudicated on the bench when evidence was being given by police constables and others who had served under him when he was in active employment, his action might be open to misrepresentation. No figures were available to show how many retired police officers, if any, had been appointed to commissions of the peace since 1945.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, November 28

SUPERANNUATION BILL, read 2a.

Wednesday, November 29

EXPIRING LAWS CONTINUANCE BILL, read 3a.

Thursday, November 30

TITHE ACT, 1936 (AMENDMENT) BILL, read 1a.
SOLICITORS BILL, read 2a.
DANGEROUS DRUGS (AMENDMENT) BILL, read 2a.

HOUSE OF COMMONS

Monday, November 27

PUBLIC WORKS LOANS BILL, read 3a.
RIVERS (PREVENTION OF POLLUTION) BILL, read 2a.

Friday, December 1

FRAUDULENT MEDIUMS BILL, read 2a.

PERSONALIA

APPOINTMENTS

Mr. E. R. Horsman, clerk to the Scarborough borough justices, has succeeded Mr. R. A. Chadwick, M.A., LL.M., as hon. secretary and treasurer of the Yorkshire Justices' Clerks' Society. Mr. Chadwick has held the office for thirteen years. Mr. Horsman is a former hon. secretary and hon. treasurer of the National Association of Justices' Clerks' Assistants.

Mr. Albert Edward Bray has been appointed senior probation officer for the Faversham and Sittingbourne petty sessional divisions and the borough of Faversham. Mr. Bray, who is forty-nine years of age, has been the probation officer in charge of the borough of Margate and the Thanet division of the Liberties of the Cinque Ports since 1937. He served in the Royal Engineers from 1919 to 1937.

Mr. G. P. Newton, probation officer in the Lancashire No. 9 combined probation area, has been appointed senior probation officer for that area.

Mr. E. A. Rush, a probation officer in the county of Middlesex, has been appointed a probation officer in the county of Gloucestershire.

OBITUARY

Mr. James William Orchard of Exmouth died on November 2, 1950, at the age of seventy-six. Mr. Orchard, who was a member of the firm of Orchard & Co., solicitors, was admitted in 1896. He was clerk to the justices for the Woodbury petty sessional division of Devon from 1923 to 1946.

IN ANSWER TO J.W.

Waiting in the Courts of Justice
For my cases to come on,
I am apt to scribble verses
Which I hope to print—anon.

I recall a legal maxim
(Have in fact composed the same)—
"Save when you compile Opinions
Very rarely sign your name."

So lest all my lighter moments
Should come home to roost with me,
I remain, my kind J.W.,
Yours sincerely, J.P.C.

NEW COMMISSIONS

HIGH WYCOMBE BOROUGH

Geoffrey Harold Baker, The Coppice, Daws Hill Lane, High Wycombe.
Edward Rolph, 260, Bowerdean Road, High Wycombe.
Harold Theodore Turnbull, Little Aufrics, Great Missenden, Bucks.

OXFORD CITY

Giles Alington, University College, Oxford.
Charles Edward Batey, 371, Woodstock Road, Oxford.
Edward Colegrove, 115, Cumnor Hill, Oxford.
Mrs. Sarah Violet Livingstone, St. Andrew, Adderbury Avenue, Iffley, Oxford.
Mrs. Doris Rees, 109, Lytton Road, Cowley.

WILTS COUNTY

George Evelyn Bull, St. Anthony's Cottage, Tisbury, Wilts.

YOUR CAREER IN LAW

Ensure a safe pass in . . .

LAW SOCIETY, BAR, LL.B., LOCAL GOVERNMENT EXAMINATIONS

with

THE RAPID RESULTS COLLEGE

(Established 1928)

* Expert postal tuition at low, inclusive fees.
* Courses revised yearly, and therefore ahead of the textbooks.
* Reduced fees to unsuccessful students of other colleges.
* Guarantee of—
  (1) Continued Tuition
  (2) NO PASS—NO FEE

Your request for our free book places you under no obligation. Write NOW to The Principal, The Department of Law,

THE RAPID RESULTS COLLEGE, DEPT. J.P., TUITION HOUSE, LONDON, S.W.19

or call at

235 GRAND BUILDINGS, TRAFALGAR SQUARE, W.C.2. ('Phone WHI: 8877 or 2428).

ALSO AT JOHANNESBURG - DURBAN - MELBOURNE - SYDNEY.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—**Betting and Gaming**—*Licensed premises—Bookmaker using telephone there to accept bets—Is this an offence?*

We should much appreciate your views on the following :—

X, who resides at a public house, carries on a bookmaker's business at an office which is completely removed therefrom, and the bulk of his business is done with people who attend at his office in person. He has not been able to obtain a telephone at his office, but there is one in the private part of the public house which he uses to some extent in connexion with his business. He uses it chiefly to ascertain the results of races that have been run, but he does also use it occasionally for accepting bets from people who ring him up for that purpose. The question is whether this use of the telephone may be held to be a user of the public house for betting in such circumstances as to amount to an offence. It is felt that using it to obtain results is probably harmless, but the position is not clear as to accepting bets by telephone. It seems to be established that this does not amount to "resorting" to the public house within the meaning of s. 1 of the Betting Act, 1853, but it also appears that an actual "resorting" need not be proved. "J.S."

Answer.

No details are given about the way in which the bookmaker carries on his business at his office with persons resorting thereto, and our opinion is not asked on this point.

We do not think that the use by the bookmaker of the public house telephone for the purpose of receiving bets constitutes any offence. There is no actual resorting, and no evidence (to make evidence of actual resorting unnecessary) that the premises were opened, kept or used for the purpose forbidden by the statute.

2.—**Children and Young Persons**—*Juvenile offender—Fine—Order for parent to pay fine and further order for parent to give security under s. 55 (2).*

If the court orders a juvenile's parent to give security for his good behaviour, can it also fine the juvenile or order parent to pay such fine? JOM.

Answer.

Yes. The power under s. 55 (1) is independent of that under s. 55 (2), and the two orders can both be made.

3.—**Guardianship of Infants**—*Mother and father separated—Order made—Effect of return of mother to father.*

Is an order made under the Guardianship of Infants Act, giving custody of an infant child to its mother and that the father shall pay to the mother a weekly sum for maintenance for the child revoked, or does it cease to have effect, if the mother returns to the father. Section 3 (3) of the 1925 Act appears to provide only in the case where an order is made while the parents are living together. If, however, the parents are separated when the order is made then subsequently the mother returns to the father and remains with him for a period of three months, can the mother be said to have "continued" to reside with the father? JOHN.

Answer.

Taken by itself the wording of s. 3 (3) of the 1925 Act is wide enough, we think, to cover the position when the mother returns to the father. Having regard, however, to the decision of the High Court on similar words in s. 1 (4) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, in the case of *Thomas* v. *Thomas* [1948] 2 All E.R. 98 we think it is not safe so to interpret s. 3 (3). We think the father's remedy if the mother returns is to apply under s. 3 (4) of the Guardianship of Infants Act, 1925, for the discharge of the order.

4.—**Husband and Wife**—*Husband in N. Ireland—Can wife apply under Married Women or Guardianship of Infants Acts to a court in England?*

A client of ours wishes to apply for court orders under the Married Women Acts and Guardianship of Infants Acts against her husband domiciled in Northern Ireland. We are doubtful whether process can be issued against a person domiciled in Northern Ireland with a view to such orders being made and shall be glad to have your views on the matter. J.D.L.C.

Answer.

Even if a cause of complaint under the Summary Jurisdiction (Separation and Maintenance) Acts within the jurisdiction of English justices can be shown there is no way at present of serving an English summons in N. Ireland. So far as Guardianship of Infants process is concerned the case of *R.* v. *Sandbach Justices, Ex parte Smith* (1950) W.N. 397 decided that the court having jurisdiction is that in whose area the *respondent* resides.

The Maintenance Orders Bill, which passed into law on October 26, is designed to regulate procedure as between England, Scotland and N. Ireland in certain married women, guardianships, affiliation and other cases.

5.—**Landlord and Tenant**—*Rent restrictions—House let in flats after 1939.*

A house, the standard rent of which was fixed before September, 1939, is after September 1, 1939, let into unfurnished rooms or flats, the owners occupying part of the house. Have the rent tribunals power, under s. 1 of the Act of 1949 to fix the standard rent of the rooms or flats? LEYL.

Answer.

Yes, if we have rightly understood the facts, and assuming the other conditions of s. 1 of the Act of 1949 to be satisfied.

6.—**Licensing**—*Confirming authority for borough—Whether qualification of "ten justices" is met where only eight "active" justices, although others on commission increase number to more than ten.*

Before June 1, 1950, the confirming authority for the city and county of L consisted of the whole body of the city justices, as there were eleven such justices who sat regularly, including the mayor and deputy mayor. On June 1, that number was reduced to eight consequent upon two of the justices being placed on the supplemental list and the automatic retirement from the bench of the deputy mayor. I expect that the appointment of new justices to the commission for the city is being delayed pending the outcome of the city council's petition to retain the city's separate commission. The city justices would naturally prefer to remain the confirming authority for the city. May they do so by counting the recorder and the county court judge for the time being as two of their number to bring that number up to ten, or must application be made to the clerk of the peace for the county of S for the appointment of three county justices in order that a joint committee may be formed in accordance with s. 4 of the 1910 Act as confirming authority for the city?

The recorder and county court judge have always been shown in the city's municipal year book as magistrates but neither has taken the oath and the county court judge sits occasionally in an adjoining petty sessional division of the county and is also chairman of the county quarter sessions. I would direct your attention to note *l* on s. 2 of the 1910 Act at the foot of p. 464 of the 1950 ed. of *Paterson*. OPAL.

Answer.

This is a difficult point upon which, so far as we know, no guide to its construction has ever been given by any High Court decision. We share the doubts of the learned editor of *Paterson* mentioned in the footnote to which our correspondent directs our attention.

We incline, however, to the opinion that the words used in s. 2 (3) of the Licensing (Consolidation) Act, 1910—"all justices, whether disqualified for acting under this Act or not, being reckoned for the purpose" are wide enough to justify a construction that if the total number of justices on the commission of the peace (including the recorder, the county court judge, and the justices included in the supplemental list) exceeds ten, the borough is qualified to form its own confirming authority from such of its justices as are not disqualified, notwithstanding that their number is less than ten.

7.—**Licensing**—*Loss of justices' certificate—Certified copy—Fee.*

At the last brewster sessions a full on-licence was renewed and a transfer was granted at the transfer sessions in April. The transferee's solicitors have now applied for copies of the licence and transfer on the grounds that the originals have been lost. No fresh application, whether for a new licence, renewal, removal, transfer or protection order, is being made, so the case would not seem to fall within the Licensing (Consolidation) Act, 1910, s. 43 (3), and it has been suggested that there is no power in these circumstances for a copy or duplicate to be issued. Certainly, there seems to be no other statutory authority and no provision for the payment of a fee, and your views as to how this situation should be met and what fees are payable will be appreciated. O.S.M.D.

Answer.

It is consistent with good practice (and is nowhere prohibited) that where a justices' certificate has been lost a certified copy shall be issued.

Section 43 (3) of the Licensing (Consolidation) Act, 1910, makes such a certified copy admissible in evidence in certain applications to justices and limits the fee payable to "half-a-crown and no more" where the certified copy is furnished "for the purpose of this section." No such limit is prescribed where the copy is furnished other than for the purpose of s. 43, but we see no reason why a similar fee should not be charged.

8.—Public Health Act, 1936—*Abatement of nuisance—Long leasehold—Title of administrator.*

The local authority served an abatement notice under s. 93 of the Public Health Act, 1936, in respect of a nuisance existing under s. 92 (1) *(a)* and specifying the works necessary to abate such nuisance. The cottage in question was, together with other premises, leased to A in August, 1878, for a term of ninety-nine years determinable on the death of the survivor of three persons, two of whom are still alive. The lessee was responsible for repairs. The lessee A died in 1902, having by his will appointed his daughter B executrix, to whom he gave the cottage. B died about thirty years ago but no grant in respect of her estate was obtained and there was no grant *de bonis non* in respect of A's estate left unadministered. C, the son of B, assumed the office of trustee and presumably collected the rent of the cottage but the legal estate was not vested in him. C died intestate in 1949, and letters of administration were granted to D who continued, for some time at any rate, to collect the rent of the cottage. The local authority served the abatement notice on D, who now states that he "does not propose to have anything to do with the cottage."

Having regard to the definition of "owner" in s. 343, is D the right person to have been served, or can the local authority require either the freeholder or the occupier to abate the nuisance?

A. RURAL.

Answer.

D is the right person. Though C never took the proper steps, he became first a trustee and may have become owner of the remaining period of the lease (we say "may have" because we are not told whether B made a will, or who was residuary beneficiary under A's will). Whatever interest C had seems to have vested in D. The council should go for him, and let him set up what defence he can.

9.—Rating and Valuation—*Occupier in prison—Liability for rates.*

The rated occupier of a dwelling-house has been committed to prison for a criminal offence. The house is now occupied by a lodger who has the use of one room only. The other rooms are locked, but contain the furniture. A relative visits occasionally to air the house.

1. Does the occupier continue to be liable for rates while in prison?
2. Can a notice under s. 15 of the Rating and Valuation Act, 1925, be served upon the lodger requiring future payments of rent to be made direct to the rating authority until the rates are satisfied (i) for a period in respect of which rates are in arrear and (ii) for the current rating period?

B.S.M.

Answer.

1. Occupation is a question of fact. If a person goes to gaol for a long spell, and does nothing about his house, his occupation might be held to have ceased. But normally he continues to occupy, by his wife and/or furniture. Here the furniture remains, and a relative airs the house, facts inconsistent with ceasing to occupy. There seems clearly to be beneficial occupation.

2. Yes: *see* subs. (3).

10.—Revenue—*Receipt stamp—Repayment of travelling expenses.*

Is a receipt required on a cheque for reimbursement of travelling and subsistence expenses paid to a member of a local authority under the Local Government Act, 1948? It is doubtful whether such a payment is a "like payment" so as to bring it within exemption (6) of sch. I to the Stamp Act, 1891 (receipt given for or upon payment of money amounting to £2 or upwards) as substituted by s. 36 of the Finance Act, 1924.

I shall be glad to have your valued opinion, please.

D.N.J.

Answer.

We do not feel even doubtful about this point, and see no ground for not stamping the receipt for such a reimbursement.

11.—Sunday Entertainments—*Licence for musical entertainments—Whether necessary in a place where Part IV of Public Health Acts Amendment Act, 1890, not adopted.*

In a borough where Part IV of the Public Health Acts Amendment Act, 1890, has not been adopted a cinema is occasionally used for the holding of musical entertainments on Sundays.

Having considered note *(t)* at p. 2274 of *Stone* and your reply to P.P. 9 at 113 J.P.N. 436, I am unable to reconcile the two opinions.

Your opinion is requested as to whether the justices have power to grant a licence under s. 3 of the Sunday Entertainments Act, 1932, in respect of the cinema in question.

NICAL.

Answer.

In our opinion, a licence for Sunday entertainment cannot lawfully be granted in a borough in which Part IV of the Public Health Acts Amendment Act, 1890, has not been adopted.

We regret that our answer to a P.P. at 113 J.P.N. 436 holds us out as being of a contrary opinion. We recanted from the view of the law therein expressed in a Note of the Week—"Sunday Musical Entertainments"—in our issue of September 24, 1949, at p. 573.

12.—Tort—*Damage to Street Lamps*

The district council are the highway and lighting authority. Recently I have been dealing with claims made by the council in respect of damage caused to street lamps by vehicles leaving the carriageway. If the driver of the vehicle fails to report the accident to the police, I find it almost impossible to obtain any direct evidence of negligence on the part of the driver, and in the absence of direct evidence it appears that the council's claims are almost bound to fail. I have studied the case of *Hunter* v. *Wright* [1938] 2 All E.R. 621, and the cases referred to in the judgments. The argument I have put forward to insurance companies is this—the fact that the motor vehicle appeared on the pavement where it had no business to be and damaged the council's property on the pavement, together with the further fact that the driver of the vehicle offers no explanation as to why the vehicle was on the pavement, is more consistent with negligence than with the exercise of reasonable care. I shall be obliged if you will advise whether it is safe to apply the doctrine of *res ipsa loquitur* to a case of this nature, and also whether, in view of the cited case, it would be advisable for the council to institute legal proceedings where the insurance companies concerned refuse to meet the claim of the local authority.

EPOC.

Answer.

Res ipsa loquitur is going too far. In *Hunter* v. *Wright*, *supra*, the defendant succeeded because her car had got on the pavement without negligence. One can, however, as the judgments show, go so far as *res ipsa suggerit*: that is, the collision between the car and the lamp-post calls for explanation and we should not hesitate to start proceedings, in a carefully selected case, where neither the driver nor the surrounding circumstances explain the fact.

'They need MORE than pity'

No amount of welfare legislation can ever completely solve the problem of children hurt by ill-treatment or neglect. There must be an independent, experienced organisation whose trained workers can protect those who cannot defend themselves—and who give the patient advice and assistance so often needed to rebuild the family life. The National Society for the Prevention of Cruelty to Children depends on voluntary contributions to continue this work. No surer way could be found of helping the helpless, and bringing happiness to those who need it most.

remember them when advising on wills and bequests

N · S · P · C · C

President: H.R.H. PRINCESS ELIZABETH

Information gladly supplied on application to the Director, N.S.P.C.C., 2 Victory House, Leicester Square, London W.C.2. Phone Gerrard 4774

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

CITY OF BRADFORD

Appointment of Full-time Male Probation Officer

APPLICATIONS are invited for the appointment of a full-time male probation officer in this city.

The appointment will be subject to the Probation Rules and the salary will be paid in accordance with the Rules. The salary will be subject to superannuation deductions and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and accompanied by copies of not more than three recent testimonials, must reach the undersigned not later than Monday, January 1, 1951.

FRANK OWENS,
Clerk to the Justices and Secretary to the Probation Committee.

City Magistrates' Clerk's Office,
Town Hall,
Bradford.

URBAN DISTRICT COUNCIL OF COULSDON AND PURLEY

Appointment of Assistant Solicitor

APPLICATIONS are invited from admitted solicitors for the above appointment in the office of the Clerk of the Council.

Applicants must have a sound knowledge and experience of conveyancing, advocacy, court practice and the preparation of contracts and agreements of all kinds. Previous Local Government experience will be an advantage.

The salary for the appointment will be £685 per annum rising, subject to satisfactory service, to £760 per annum (A.P.T. VIII) plus £30 per annum London Area Weighting.

The appointment will be subject to the provisions of the National Scheme of Conditions of Service and will be terminable by one calendar month's written notice on either side.

Applicants must disclose in writing whether to their knowledge they are related to any member of the Council or to the holder of any senior office under the Council.

The successful candidate will be required to pass a medical examination.

A form of application can be obtained from the undersigned, to whom applications on the forms provided must be delivered not later than Saturday, December 30, 1950, accompanied by copies of three recent testimonials. Canvassing in any form will be a disqualification.

ERIC F. J. FELIX,
Clerk of the Council.

Council Offices,
Purley.

INQUIRIES

DIVORCE—DETECTIVE AGENCY. T. E. HOYLAND, **Ex-Detective Sergeant.** Member of B.D.A. and F.B.D. Observations; confidential inquiries and Process serving anywhere. Agents in all parts of the country. Own car.—1, Mayo Road, Bradford. Tel.: 26823, day or night.

Now Available

THE LAWYER'S REMEMBRANCER AND POCKET BOOK 1951

This comprehensive reference book, brought completely up to date, includes the new County Court Rules, the legal calendar, Costs, Fees, and Allowances, Bankruptcy, Practice Directions, Death Duties, and a mass of other important legal and general information.

Ordinary or Refill Edition: 12s. 6d., *by post* **5d.** *extra.*

BUTTERWORTH & CO. (Publishers) LTD.
Bell Yard, Temple Bar, London, W.C.2

Just Published

PERSONAL DESCRIPTIONS

By

Superintendent A. L. ALLEN
Metropolitan Police Training School Hendon, London

WITH FOREWORD BY
SIR HAROLD SCOTT, K.C.B., K.B.E.
Commissioner, Metropolitan Police

The author of this new book has made a special study of identification methods, and the fruits of his long experience are here published for the first time, with profuse illustrations.

Price: 7*s.* 6*d.*, by post 6*d.* extra

BUTTERWORTH & CO. (Publishers) LTD.
Bell Yard, Temple Bar, London, W.C.2

CITY OF SALFORD

Assistant Common Law Clerk

APPLICATIONS are invited for the above position.

Local government experience desirable but not essential.

Salary scale £520—£570. The salary is subject to deduction for superannuation purposes, and the successful applicant will be required to pass a medical examination. Applicants must state whether or not they are related to any member of the Council or senior officer of the corporation.

Applications, stating age, full particulars of experience, and the names of two persons to whom reference can be made, should reach me not later than December 23, 1950.

H. H. THOMSON,
Town Clerk.

Town Hall,
Salford, 3.

BOROUGH OF WOOD GREEN

Assistant Solicitor

THE Council invite applications for the appointment of Assistant Solicitor on the permanent establishment of the Town Clerk's department at a salary within A.P.T. Grades VI (£595—£660 × £20 (2) and £25 (1)), and VII (£635—£710 × £25 (3)), of the National salary scales, together with the appropriate "London Weighting" allowance.

Candidates must be qualified solicitors, and the commencing salary will be fixed in relation to the qualifications and experience of the successful applicant, it being understood that the salary for applicants with at least two years' legal experience from the date of admission will be in accordance with A.P.T. Grade VII.

The appointment is subject to the provisions of the Local Government Superannuation Act, 1937, and the successful candidate will be required to pass satisfactorily a medical examination.

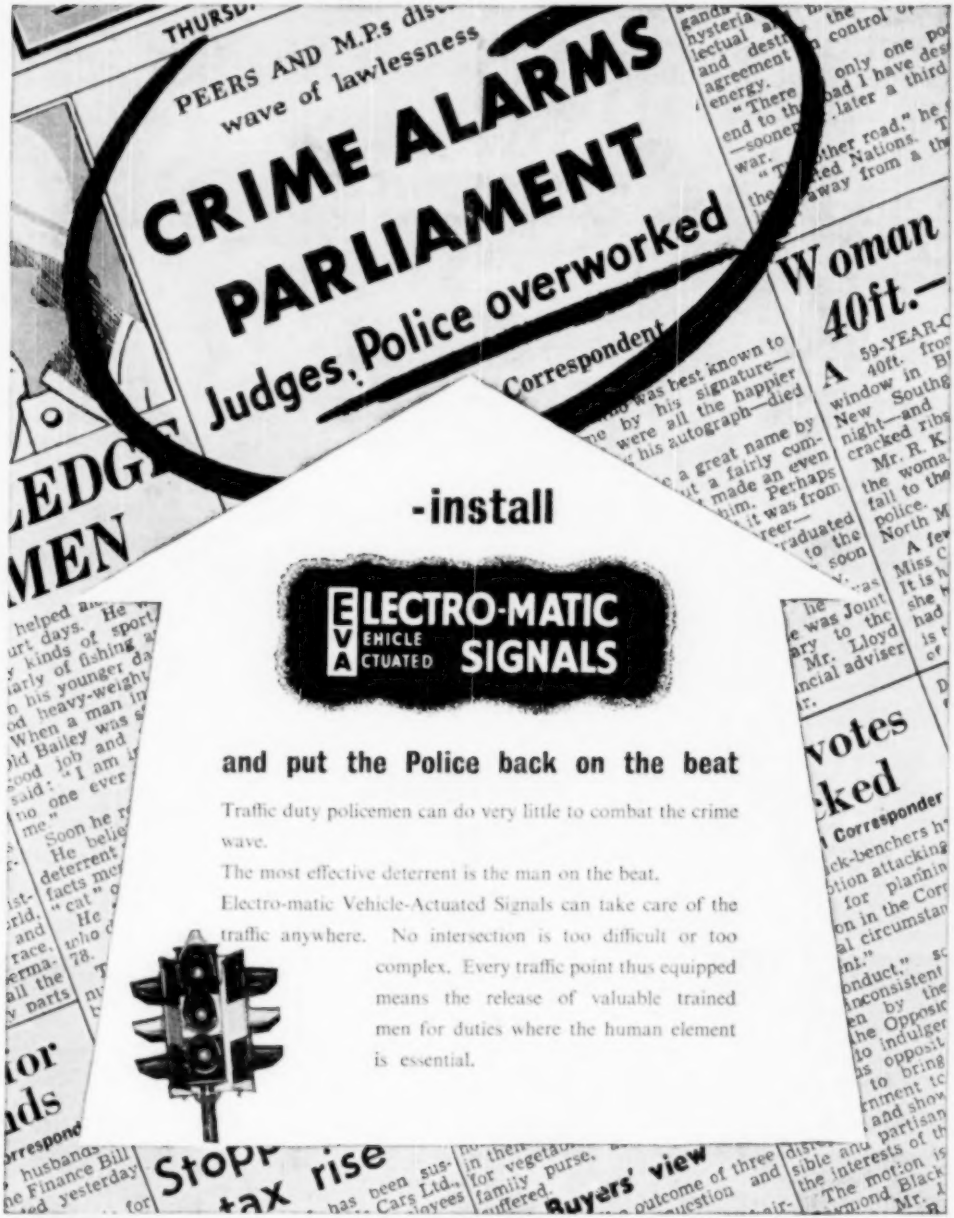
Applications, stating age, qualifications and experience, and the names and addresses of two referees, must reach the undersigned not later than Saturday, December 16, 1950.

Canvassing, either directly or indirectly, will disqualify.

H. CHUBB,
Town Clerk.

Town Hall,
Wood Green, N.22.
December 1, 1950.

When replying to advertisers please mention the Justice of the Peace and Local Government Review



AUTOMATIC TELEPHONE & ELECTRIC CO. LTD., Strowger House, Arundel Street, London, W.C.2.
Telephone: TEMple Bar 4506. Telegrams: Strowger, Estrand, London. Strowger Works, Liverpool 7

A10331—823

Printed by R. J. ACFORD Ltd., Terminus Road, Chichester, Sussex, and Published by the Proprietors, JUSTICE OF THE PEACE, Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. SATURDAY, December 9, 1950. Price 1s. 8d., post free 1s. 9d.